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The law of master and servant is rapidly assuming a most remarkable pre-eminence, especially in this country. The reasons are not hard to discover. Vast combinations of capital have swept all business enterprises into the hands of the few, and the small independent merchant will in a few years be one of the curiosities of trade. While it is certain that there are fewer masters it has become equally a matter of common knowledge that there has been of recent years a most unprecedented increase in the number of those whose *status* in the eye of the law is that of servant. From the president of a railroad to the office boy of the smallest business establishment in the country is to be found the vast proportion of our population, all of them dependent upon the will of some one else for their daily occupation and sustenance. This may in more than one respect be justly regarded as a calamity. The courts, however, are beginning to recognize the changed conditions and some of its peculiar inequalities. One of these is the disadvantage of the employee in procuring a situation where the market for such employment is in control a few men backed by vast combinations of capital. In such a case a man has not the same opportunity to receive employment when discharged by one employer as formerly, and especially is this the case when the employers enter into an agreement not to employ persons discharged from other concerns except on certain conditions. So the rule has been laid down requiring corporations to give discharged employees "clearance" cards wherever such is the custom and holding them liable for compensatory and sometimes exemplary damages for their wrongful refusal. Hundley v. Railroad (Ky. 1898), 48 S. W. Rep. 429; New York, etc. R. R. v. Schaffer (Ohio, 1898), 17 Ohio Cir. Ct. Rep. 77. This rule in its application is of modern origin and is based on custom or agreements between employers. At common law no duty is imposed on an employer to give his employee a letter of recommendation or clearance card on the severance of the relation, in the absence of any custom or usage on the part of said employer. Cleveland, etc. R. R. v. Jenkins, 174 Ill. 398, 51 N. E. Rep. 811, reversing 75 Ill. App. 17. But of recent years agreements as to the employment and discharge of employees are very general among large corporations, and while they are justified in the making of such agreements, they are at the same time held strictly liable for any abuse thereof. Thus where there is a custom among railroads to keep a record of the causes for which employees have been discharged, and for one company not to employ persons who have been discharged for certain causes by another company, it is part of every contract of employment by such companies that such entries, when made, shall be true, and a discharged employee may sue, either in contract or tort, to recover damages resulting from the breach of that part of the contract. Hundley v. Railroad, *supra*. So also, when railroad companies agree not to employ any workmen who may have been discharged from any of such companies, parties to the agreement, unless such applicant presents a "clearance" showing that he had not engaged in a certain strike, a railroad company which, on discharge of an employee, maliciously refuses to give such a clearance is liable for exemplary as for compensatory damages. New York, etc. R. R. v. Shaffer, *supra*.

Questions of wrongful discharge of servant by employer are often litigated and the principles governing their settlement are as old as the common law. The reason for the great mass of litigation on this point is probably that already suggested, the vast increase in the number of those assuming the relation of master and servant, rather than to any uncertainty in the law itself. One phase of this question, however, not as yet altogether free from doubt, is the liability of third persons for malicious interference resulting in the discharge of the servant. The old rule in this country was founded on the case of Chipley v. Atkinson, 23 Fla. 206, which held that an employee can maintain an action against one who maliciously procures his discharge, provided he can prove damages resulting from such discharge. The case of Allen v. Flood, decided by the house of lords in 1897, 67 L.

J. Q. B. Div. 119, shook the authority of some of the older decisions in England and America. In that case, which was very extensively considered, boiler makers in commom employment with the respondents, who were shipwrights working on wood, objected to work with the latter on the ground that in a previous employment they had been engaged on iron work. The appellant an official of the boiler makers' union, in response to a telegram from one of the boiler makers, came to the yard and dissuaded the men from immediately laying down their work, as they threatened to do, indicating that, if they did so, he would do his best to have them deprived of the benefits of the union, and also fined. They must wait until the matter was settled. The appellant then saw the managing director, to whom he said that if the respondents, who were engaged from day to day, were not dismissed, the boiler makers would leave their work or be called out. The respondents were thereupon dismissed. Held by six of their lordships as against three, that no actionable wrong had been committed by the appellant. In the very recent case of Hollenbeck v. Ristine, 86 N. W. Rep. 377, the Supreme Court of Iowa held generally that one person cannot advise another to discharge an employee, accompanying his advice with libelous charges and escape liability therefor. In this case the surgeon of a street railroad intimated to the president that he would discontinue his relation with the company unless a certain employee, a conductor on the road, was discharged. It seemed that the conductor owed the physician a bill for services which the latter claimed he refused to pay but was "cowardly slinking behind the statute of limitations." The court, in commenting on the case of Allen v. Flood, says: "In that case the appellant made no malicious charge against the complainants. There was no evidence of threat or coercion. We think the case is not in point, and, if it were, that the rule announced is well sustained by the authorities of this country, and we see no reason to depart from it." Recent cases supporting the court in this case are the following: Moran v. Dunphy (Mass.), 59 N. E. Rep. 125; Martens v. Reilly (Wis.), 84 N. W. Rep. 840; Angle v. Railroad (U. S.), 14 Sup. Ct. Rep. 240.

NOTES OF IMPORTANT DECISIONS.

UNBORN CHILD — RIGHT OF ACTION FOR WRONGFUL DEATH.—What rights have unborn children or their parents for injuries sustained while in that state of existence? This is certainly a very novel question of law, even if it is not one which is likely to arise with important frequency. An interesting phase of the question arose in the recent case of Gorman v. Budlong, 49 Atl. Rep. 704, where the Supreme Court of Rhode Island held that where a mother was injured through the negligence of defendant so that she gave premature birth to a child, which died as a result of the premature delivery, the statute did not entitle the child's father to maintain an action, as the next of kin, for its wrongful death. In this case Gen. Laws, ch. 233, § 14, provides that whenever death shall result from a wrongful act the next of kin may maintain an action therefor, if the negligence was such that the deceased could have maintained an action had he survived. A child *en ventre sa mere* is a child while yet unborn. Under Lord Campbell's Act, therefore, an infant may claim compensation for the loss, while *en ventre sa mere*, of an immediate relative. Nelson v. Railroad, 78 Tex. 621. This is about as far as the cases go in giving right to infants or parents to sue for injuries to either while the former are *en ventre sa mere*. That a parent cannot have a right of action in such case is based upon the fact that the sole reason giving a right of action in such cases is altogether wanting, *i. e.*, loss of services. The services of a child in that stage of being is, of course, of no value whatever, and the father suffers no pecuniary loss in its death.

ASSIGNMENT OF UNEARNED SALARY. — The question of the validity of an assignment of unearned wages is often litigated. In its application to public officers this question arose recently in the case of Holt v. Thurman, 63 S. W. Rep. 280, where the Supreme Court of Kentucky held that the assignment by a public officer of salary to be earned in future is void as against public policy. We review the latest authorities on this question as follows: An assignment of wages to become due, without limit as to amount or time, and without acceptance by the employer, and without notice to attaching creditor is void as to such creditor. Steinbach v. Brant, 29 Minn. 383, 82 N. W. Rep. 651. An assignment of future wages which may be earned under a contract of employment not yet in existence is void. Tohman v. Roofing Co., 9 Ohio S. & C. P. Dec. (1899) 501. An assignment of salary to become due to a pulbic officer is void. August v. Crane, 59 N. Y. S. 583. It was also held in this case that an assignee in such a case cannot claim that he was misled by an assertion in the written assignment that the claim was a "legal claim" against the city, the assignment being void. One hired by the day may make a valid assignment of his future earn-

ings. Dolan v. Hughes (R. I. 1898), 40 Atl. Rep. 344; Wellborn v. Buck (Ala. 1897), 18 South. Rep. 786. Where an assignment of salary or fees to become due to a district attorney is not filed until after such services are rendered, the assignment will be considered as made before the rendition of such services. State v. Barnes (S. D. 1897), 73 N. W. Rep. 80. An assignment by an assessor or other public officer of his salary or compensation, for future service, is contrary to public policy and void. This rule applies also where the service is continuing and incomplete, not yet payable. Stevenson v. Kyle (W. Va. 1896), 24 S. E. Rep. 886.

REMAINDERS—SALE BY PARENT AS LIFE TENANT FOR REINVESTMENT.—Whether a court of equity has authority to authorize a parent, who has a life estate in realty, with remainder over to her minor children, to sell the property in fee for the purpose of reinvestment, or to enhance the interest of the remainder-men, and whether such a sale defeats the interest of such remainder-men, has always been an interesting and controverted question. In the recent case of Hoskins v. Ames, 29 South. Rep. 828, the Supreme Court of Mississippi held that where a mother, who owns a life estate in real estate, with remainder over to her minor children, sells the property in fee under an order of court, which sale is invalid as to the remainder, limitations in favor of the purchaser do not commence to run against the remainder men until the death of the mother. The court gives this interesting review of the origin of the review in England:

"In England the rule is well settled that such equity has no inherent power to sell the real estate of an infant as being for its best interest or for reinvestment. Lord Chancellor Hardwicke, declared by Lord Campbell to be the most consummate judge who ever sat in the court of chancery, in Taylor v. Philips, 2 Ves. Sr. 23, said: 'There is no instance of this court's binding the inheritance of an infant by any discretionary act of the court. As to personal things, as in the composition of debts, it has been done, but never as to the inheritance; for that would be taking on the court a legislative authority,—doing that which is properly the subject of a private bill.' And since that time—a period of more than 150 years—we find no case in the English decisions that contravenes the doctrine established in that case. The English parliament was accustomed, at the suggestion of the judges, to pass a bill authorizing the court of equity to decree a sale of the infant's real estate for reinvestment; but the court of its own authority, as an equity court and without the power conferred by a legislative act, has always declined to order the sale of the inheritance of an infant. Edmund Hatch, in his will, devised a life interest to his daughter and a fee to her children, his grandchildren. It is the clear intention of the testator that the life tenant should have no power to dispose of the fee; and yet if, by a petition in the chancery court, it can invest him with the power of sale, the intention of the testator is defeated. The power to make the devise is useless if equity can, in effect, annul it. Many American courts hold to the English doctrine on this subject; while many also hold that equity may decree the sale of land of an infant whenever it shall be for its interest to have a sale of them made. In reference to these American cases we are disposed to repeat what was said by the court in Freeman v. Guion, 11 Smedes & M. 58, above quoted, at most, if not all, the American cases holding a doctrine adverse to the English rule, have been decided since the adoption of our constitution of 1832, and of necessity it was not adopted with any reference to their holdings." A list of the authorities on each side of the question may be found in the case of Richards v. Railway Co., 106 Ga. 614, 33 S. E. Rep. 193.

JUDGMENT — EQUITABLE ASSIGNMENT.—The equitable assignment of judgment is a question often litigated. An interesting phase of the question appeared recently in the case of Harris v. Manufacturing Co., 30 South. Rep. 273. In that case complainant recovered a judgment of $436.13 against defendant, and a few days later defendant recovered a judgment of $200 against complainant. Defendant was insolvent, and had agreed to give his attorneys 40 per cent. of the judgment recovered in his favor. Complainant sued to set off the defendant's entire judgment of $200 against a like amount of complainant's judgment. Held, that there was an equitable assignment *in præsenti* of 40 per cent. of the judgment to defendant's attorneys, and it was error to grant the set-off for the full amount. The most striking part of the court's opinion is its reference to the briefs of counsel. The court said: "The principles of law applicable, and the authorities in which they may be found on both sides, are so admirably set forth by the respective counsel for appellant that we direct their briefs to be published in full." We quote from appellant's brief as follows:

"An assignment of a cause of action may be either a legal assignment or it may be equitable assignment. In case of a legal assignment, as a matter of course, all the formalities of transfer have to be complied with. But where it is an equitable assignment it does not obtain its validity from the observance of legal formalities, but from the intention of the parties. Any order, writing, or act, or any oral or written declaration evidencing an intention to make an assignment, is just as effectual as the most formal instrument. The leading authority is to be found in Pass v. McRhea, 36 Miss. 143; 3 Pom. Eq. Jur. §§ 1271, 1282; and Williams v. Ingersoll, 89 N. Y. 518. Also the following authorities are cited: Bisp. Eq. § 167; Macklin v. Kinealy, 141 Mo. 113, 41 S. W. Rep. 893; Story, Eq. Jur. 376. The agreement by Harris to give his attorneys '40 per cent. of the amount' that they should recover in judg-

ment vested in the attorneys, then and there a valid equitable interest in the judgment. Harris has done all that he could do to make an equitable assignment to his attorneys. And if it is an equitable assignment as to him, it must be an equitable assignment to all parties who represent him, and they cannot avail themselves of any irregularties that Harris himself could not take advantage of. A leading case on this subject is to be found in Patton v. Wilson, 34 Pa. 299, and at the close of the opinion to be found in Ramsey's Appeal, 27 Am. Dec. 301; 3 Pom. Eq. Jur. §§ 1271, 1282; Bish. Eq. § 167.

"A judgment creditor only gets the right to satisfaction of his judgment out of the property that his judgment debtor actually owns, and his judgment lien only extends to the actual interest of the judgment debtor in any property on which he attempts to have his judgment satisfied, and if his judgment debtor is the apparent owner of any property, and an execution is levied by the judgment creditor on that property, and it is impressed with an equitable ownership in some third party, the equitable owner of the title is obliged to prevail, as against the execution of the judgment creditor without notice, for the reason that he can only succeed to such interest as the judgment debtor had in the property, and, being a volunteer, so to say, he cannot complain that he has no notice of the equitable ownership. Foute v. Fairman, 48 Miss. 536; Mississippi Val. Co. v. Chicago, St. L. & N. O. R. Co., 58 Miss. 846." Other cases which might be cited: Ames v. Bates, 119 Mass. 399; Hovey v. Morrill, 60 Am. Rep. 316; Van Pelt v. Boyer, 8 How. Pr. 320; Swift v. Prouty, 64 N. Y. 546; Hackett v. Connett, 2 Edw. Ch. 73; Deans v. Robertson, 64 Miss. 195.

DOES THE UNITED STATES CONSTITUTION INHIBIT STATE LAWS LIMITING HOURS OF PRIVATE DAILY EMPLOYMENT?

It is proposed to deal with this question irrespective of the wording of particular statutes, on its merits, in the light of judicial determination which seems to be in point, and the language of the constitution itself, as construed by the courts and leading text book writers. Should it or not seem possible, under existing law, that such statutes may be enacted, it is beyond the purpose of this article to discuss the desirability of doing so. In the absence of a constitutional bar, the latter question is purely legislative in character and thus beyond the purview of judicial inquiry, to which is confined the question here propounded. In the Declaration of Independence, which severed the political bonds theretofore existing between the American colonies and Great Britain, it is declared "that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do." This clause, considered in connection with the events succeeding the promulgation of the instrument which contains it, indicates an intention on the part of the colonists to be "free and independent" from restraint of whatever character, to the fullest extent consistent with the protection and conservation of their individual rights and liberties. The same instrument indicates further the state of mind to which oppression of various kinds had led the founders of our government, when it is declared that "we hold these truths to be self-evident that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness."

It cannot be doubted that the same ideas were present in the minds of the framers of our constitution, or that it was sought in the latter instrument to give permanent effect to the declarations of the former. In the present inquiry it becomes, therefore, pertinent to investigate the meaning of the "full power to * * * establish commerce," and of "life, liberty, and the pursuit of happiness." The federal constitution, article 1, section 8, provides that: The congress shall have power, * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Concerning what constitutes commerce between the several states Judge Cooley, in his Principles of Constitutional Law, at p. 66, says: "To constitute commerce between states it is essential that it be not confined to one state exclusively, but concern more than one. * * * The commerce of a state which congress may control must in some stage of its progress be extraterritorial." In this connection he cites the following cases.[1] In Veazie v. Moor[2] it is said: "A pretension as far reaching as this—'that because the products of domestic enterprise in

[1] Gibbons v. Ogden, 9 Wheat. 1, 189; The Passaic Bridges, 3 Wall. 782; Veazie v. Moor, 14 How. 568, 574.

[2] 14 How. 568, 574.

agriculture or manufactures or in the arts may ultimately become the subjects of commerce outside the state, that the control of the means or the encouragements by which enterprise is fostered and protected is implied in the important grant of power'—would extend to contracts between citizen and citizen of the same state, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries, the mines and furnaces of the country; for there is not one of these avocations the results of which may not become the subjects of foreign commerce, and be borne, either by turnpikes, canals, or railroads, from point to point within the several states, towards an ultimate destination. Such a pretension would effectually prevent or paralyze every effort at internal improvement of the several states; for it cannot be supposed that the states would exhaust their capital and their credit in the construction of turnpikes, canals, and railroads, the remuneration derivable from which might be immediately wrested from them, because such public works would be facilities for commerce which, whilst availing itself of these facilities, was unquestionably internal, although immediately or ultimately it might become foreign."

It follows that, because of its very nature, labor is not to be included within the commerce, power to control and regulate which is granted to congress. What, then, may be the federal powers, touching labor, under other clauses of the constitution? The clauses which bear upon the question are as follows: "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."[3] "No person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."[4] * * * "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."[5] In his Principles of Constitutional Law, p. 225, Judge Cooley says: "Life and liberty.—These words are used in constitutional law as standing for and representing all personal rights whatsoever, except those which are embraced in the idea of property. The comprehensive word is liberty; and by this is meant, not merely freedom to move about unrestrained, but such liberty of conduct, choice and action as the law gives and protects."

In his Constitutional Limitations, at p. 734, the same author says: "In the early days of the common law it was sometimes thought necessary, in order to prevent extortion, to interfere, by royal proclamation or otherwise, and establish the charges that might be exacted for certain commodities or services. The price of wages was oftener regulated than than of anything else, the local magistrate being generally allowed to exercise authority over the subject. The practice was followed in this country and prevailed to some extent up to the time of independence. Since then it has commonly been supposed that a general power in the state to regulate prices was inconsistent with constitutional liberty. It has nevertheless been conceded that in some cases this might be done; * * * the ground appears to be that the employment * * * is a public or *quasi*-public employment; that their property in the business is 'affected with a public interest,' and thereby brought under that general power of control which the state possesses in the case of other public employment. * * * What circumstances shall affect property with a public interest is not very clear. The mere fact that the public have an interest in the existence of the business and are accommodated by it cannot be sufficient, for that would subject the stock of the merchant and his charges to public regulation. The public have an interest in every business in which an individual offers his wares, his merchandise, his services, or his accommodations to the public; but his offer does not place him at the mercy of the public in respect to charges and prices. * * * In the following cases we should say that property in business was affected with a public interest: 1. Where the business is one the following of which is not of right, but s permitted by the state as a privilege or

[3] Article 4, Section 2.
[4] Amendments, Article 5.
[5] Amendments, Article 14.

franchise. * * * 2. Where the state, on public grounds, renders to the business special assistance, by taxation or otherwise. 3. Where, for accommodation of the business, some special use is allowed to be made of public property or of a public easement. 4. Where exclusive privileges are granted in consideration of some special return to be made to the public. Possibly there may be other cases."

Thus clearly is it stated by the eminent authority quoted that the rights indicated by the words "life, liberty and property," as here used, include all personal rights whatsoever, emphasizing meanwhile the proposition that the only rights which our constitution contemplates shall be conserved to the individual are such as may be exercised with due consideration to the equal rights of others. He also points out that the right to labor and to contract for the employment of labor as shall seem best to the contracting parties, has, since the institution of our government, been considered so distinctively a matter of personal concern, properly independent of governmental interference, as that its regulation by the state has been deemed "inconsistent with constitutional liberty." Concerning the right of the individual to seek employment for his labor, the same learned authority says: "The general rule is that every person *sui juris* has a right to choose his own employment, and to devote his labor to any calling, or at his option to hire it out in the service of others. This is one of the first and highest of all civil rights, and any restrictions that discriminate against persons or classes are inadmissible. * * * Employments are nevertheless subject to control under the state power of police, and may be regulated in various ways, and to some extent restricted: 1. The state may forbid certain classes of persons being employed in occupations which their age, sex or health renders unsuitable for them. * * * 2. The state may require special training for some employments, and forbid persons engaging in them who have not proved their fitness on examination, and been duly licensed. * * * 3. Any occupation opposed to public policy, like that of gaming, may be prohibited altogether."[6]

Again he says: "If the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict. To forbid an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their 'pursuit of happiness;' and those who should claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negatived."[7] Also: "The general rule undoubtedly is, that any person is at liberty to pursue any lawful calling, and to do so in his own way, not encroaching upon the rights of others. This great right cannot be taken away. It is not competent, therefore, to forbid any person or class of persons, whether citizens or aliens, offering their services in lawful business, or to subject others to penalties for employing them."[8] Again: "Every person *sui juris* has a right to make use of his labor in any lawful employment on his own behalf or to hire it out in the service of others. This is one of the first and highest of civil rights."[9] Also: "Every man controls his own property as he pleases, puts it to such use as he pleases, improves it or not, as he may choose, subject only to the obligation to perform, in respect to it, the duties he owes to the state and to his fellows. The state cannot substitute its judgment for his as to the use he should make of it for his own advantage."[10]

Along similar lines is the following: "In so far as the employment of a certain class in a particular occupation may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitionality of any statute which prohibits their

[6] Cooley's Principles of Constitutional Law, p. 231.

[7] Cooley's Constitutional Limitations, p. 486.

[8] Cooley's Constitutional Limitations, p. 745.

[9] Cooley on Torts, p. 326.

[10] Cooley on Torts, p. 337.

prosecution of that trade. But it is questionable, except in the case of minors, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. Minors are under the guardianship of the state, and their actions can be controlled so that they may not injure themselves. But when they have arrived at majority they pass out of the state of tutelage and stand before the law free from all restraint, except that which may be necessary to prevent the infliction by them of injury upon others. It may be, and probably is, permissible for the state to prohibit pregnant women from engaging in certain employments, which would be likely to prove injurious to the unborn child, but there can be no more justification for the prohibition of the prosecution of certain callings by women, because the employment will prove hurtful to themselves, than it would be for the state to prohibit men from working in the manufacturing of white lead, because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of the iron smelting works, because the lives of men so engaged are materially shortened."[11] Further, the same writer says: "Laws, therefore, which are designed to regulate the terms of hiring in strictly private employments are unconstitutional because they operate as an interference with one's natural liberty, in a case in which there is no trespass upon private right, and no threatening injury to the public. And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day, which the employer may demand. There can be no constitutional interference by the state in the private relation of master and servant except for the purpose of preventing fraud and trespasses."[12]

If the statement of the law by these two authorities—Cooley and Tiedeman—is to be accepted as correct, it must be concluded that every person may contract with reference to his own labor as he sees fit, independently of any restriction or interference on the part of the state, so long as his undertakings are confined to those employments, the character of which is not under the ban of legal inhibition, or so long as their public or *quasi*-public character does not subject them to state control, unless, being a minor, he is under the special guardianship of the state; or, being a pregnant woman, she is to be restrained because of possible injury to her child; or, unless the pursuit of such employment under the particular circumstances is so far injurious to the public generally as to be properly restrained for that reason. Mr. Tiedeman plainly says that in no event is a person *sui juris* to be restricted in his employment because of possible injury to himself, pointing out most excellent and convincing reasons why not. It is to be noticed also that the discussion refers to no particular provisions of state constitutions, but to "liberty" and "the pursuit of happiness" as protected and conserved to the individual by the federal constitution. Pointing to the same end is the language of Field, J., in Butchers' Union Company v. Crescent City Company:[13] "Among those inalienable rights, as proclaimed in that great document (the Declaration of Independence), is the right of men to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their facilities, so as to give them the highest enjoyment. The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said: 'The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks

[11] Tiedeman on Limitations of Police Power, Section 86.

[12] Tiedeman on Limitation of Police Power, Section 178.

[13] 111 U. S. 757.

proper, without injury to his neighbors, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper.' "[14] Equally strong is the language of Matthews, J., in Yick Wo v. Hopkins:[15] "When we consider the nature and the theory of our institutions of government, the principle upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Again, Field, J., dissenting in Powell v. Pennsylvania,[16] says: "With the gift of life there necessarily goes to every one the right to do all such acts, and follow all such pursuits, not inconsistent with the equal rights of others, as may support life and add to the happiness of its possessor. The right to pursue one's happiness is placed by the Declaration of Independence among the inalienable rights of man, with which all men are endowed, not by the grace of emperors or kings, or by the force of legislation or constitutional enactments, but by their creator, and to secure them, not to grant them, governments are instituted among men."

Further authorities to this end are as follows: "The constitutional guaranty that no person shall be deprived of his property without due process of law may be violated without the physical taking of property for public or private use. Property may be destroyed or its value may be annihilated; it is owned and kept for some useful purpose, and it has no value unless it can be used. Its capability for enjoyment and adaptability to some use are essential characteristics and attributes without which property cannot be conceived; and hence any law which destroys it or its value, or takes away any one of its essential attributes, deprives the owner of his property. * * * So, too, one may be deprived of his liberty and his constitutional rights thereto violated, without the actual restraint or imprisonment of his person. Liberty, in its broad sense as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation. All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements (except as such laws may be passed in the exercise by the legislature of the police power), are infringements upon his fundamental rights of liberty, which are under constitutional protection."[17] "The law will not allow the rights of property to be invaded under the guise of a police regulation

[14] Adam Smith's Wealth of Nations, Book I. Ch. 10.
[15] 118 U. S. 369.
[16] 127 U. S. 692.
[17] Earl, J., in Matter of Application of Jacob, 98 N. Y. 105.

for the promotion of health, when it is manifest that such is not the object and purpose of the regulation."[18] "The law will not allow rights of property to be invaded under the guise of a police regulation for the preservation of health or protection against a threatened nuisance; and when it appears that such is not the real object and purpose of the regulation, courts will interfere to protect the rights of the citizen."[19] "All sorts of restrictions and burdens are imposed under the police power, and when these are not in conflict with any constitutional prohibition or fundamental principle they cannot be successfully assailed in a judicial tribunal. * * * But under the pretense of prescribing a police regulation, the state cannot be permitted to encroach upon any one of the just rights of the citizen which the constitution intended to secure against abridgment."[20]

The language of Mr. Justice Field and Mr. Justice Matthews, and that of the other authorities cited, certainly tends strongly to support the proposition that the right of residents in the United States to freely contract with reference to their own labor in any lawful calling is secured to them, not alone by our Declaration of Independence and constitution, but by the even more inviolable fundamental principles of liberty itself. It is pointed out, also, that this right may not be abridged on any trumped-up pretext for the exercise of the police power of the state. There is no doubt that, in proper cases, every right of the individual may be abridged to conform to the just demands of the people at large. To what extent is indicated by Harlan, J., in Patterson v. Kentucky:[21] "By the settled doctrines of this court, the power extends, at least, to the protection of the lives, the health and the property of the community against the injurious exercise by any citizen of his own rights. State legislation, strictly and legitimately for police purposes, does not, in the sense of the constitution, necessarily intrench upon any authority which has been confided, expressly or by implication, to the national government. * * * Whether the policy thus pursued by the state is wise or unwise, it is not the province of the national authorities to determine. That belongs to each state, under its own sense of duty, and in view of the provisions of its own constitution. Its action, in those respects, is beyond the corrective power of this court." Yet it is not conceivable that this language should be construed to mean that the legislature may exceed the limitations of constitutional law or the basic principles of our government.

The laws thus far enacted for the regulation of hours of employment rest upon an exercise of the police power, either because the employment is public or *quasi*-public in character and the interests of the public demand such regulation; or that the health of the community will become impaired, in the absence of such regulation, because of the effect of such employment on the persons so employed. To the first class of cases, obviously, no attention need be given in connection with the present discussion. Cases and statutes, squarely in point, which go so far as to regulate the hours of labor of men engaged in private employments, are few. The Utah statute, regulating the hours of labor of men employed in smelters, etc., applies only to these particular employments. This act was held not to be in conflict with the constitution of the state, which provides in express terms that "the legislature shall pass laws to provide for the health and safety of employees in factories, smelters and

[18] Austin v. Murray, 16 Pick. 121, 126.

[19] Watertown v. Mayo, 109 Mass. 315, 319.

[20] Slaughter-House Cases, 16 Wall. 36, 87. See also: People v. Otis, 90 N. Y. 52; Fertilizing Company v. Hyde, 97 U. S. 659; Rockwell v. Nearin, 35 N. Y. 302; Wynehamer v. People, 13 N. Y. 378; Craig v. Klein, 65 Pa. St. 399; Herdic v. Young, 5 P. F. Smith, 176; Thorpe v. Rutland, 27 Vt. 149; Coe v. Shults, 47 Barb. 64; Green v. Savannah, 6 Ga. 1; People v. Hawley, 3 Pick. 330; Ames v. County, 11 Mich. 139; Vanderbilt v. Adams, 1 Cow. 349; *In re* Danville Cemetery Association, 66 N. Y. 560; Town of Lakeview v. Rose hill Company, 70 Ill. 181, 2 Kent's Com. I; Berthalf v. O'Reilly, 74 N. Y. 515; Live Stock, etc. Association v. Crescent City, etc., 1 Abb. (U. S.) 398, 16 Wall. 106; Corfield v. Coryell, 4 Wash. C. C. 380; Mayor, etc. v. Thorne, 7 Paige's Ch. 263; Butchers' Union Company v. Crescent City Company, 111 U. S. 746, 751, 760; People v. Marx, 99 N. Y. 377, 386. As to what constitutes a proper exercise of police power, see Slaughter House Cases, 111 U. S. 746; License Cases, 5 How. 504; Gilman v. Philadelphia, 3 Wall. 713; Henderson v. Mayor of New York, 92 U. S. 259; R. R. Company v. Husen, 95 U. S. 465; Beer Company v. Massachusetts, 97 U. S. 25; Boyd v. Alabama, 94 U. S. 645.

[21] 97 U. S. 504.

mines."[22] In Holden v. Hardy,[23] the decision of the state court is affirmed, Brown, J., using the following language: "Upon the principles stated, we think the act in question may be sustained as a valid exercise of the police power of the state. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees, and so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the federal courts. * * * We have no disposition to criticise the many authorities which hold that state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion on this subject. It is sufficient to say of them, that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in the exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class." This, then, seems to be the *status* of affairs: The restriction by the state of the right of individuals to contract with reference to their own labor, is in contravention of any fair construction of American constitutional law and individual rights as declared by our Declaration of Independence; such restrictions may be exercised only in certain cases where the rights of the public are plainly paramount to those of the individual; but the United States Supreme Court will not interfere to prevent such restriction so long "as there are reasonable grounds for believing that the restriction is the result of a proper exercise of the police power of the state."

Denver, Colo., DANA T. JONES.

[22] See State v. Holden, 14 Utah, 71; State v. Holden, 4 Utah, 96; Short v. B. B. & C. M. Company, 57 Pac. Rep. 720.

[23] 169 U. S. 366, 396.

MUTUAL BENEFIT ASSOCIATIONS—CHANGE OF BY LAWS—CONSENT OF MEMBER—RECOVERY OF PREMIUMS—MANDAMUS.

STRAUSS v. MUTUAL RESERVE FUND LIFE ASSOCIATION.

Supreme Court of North Carolina, June 4, 1901.

1. A mere general consent, given by a member of a mutual benefit association, that its constitution and by-laws may be amended, does not authorize such a change in its rules as will destroy his vested rights under his insurance contract by subjecting him to pay a greater rate of assessment than the contract calls for.

2. Where a mutual benefit association violates its contract with a member, the most practical remedy is the recovery of premiums paid, with interest thereon, and *mandamus* for reinstatement need not be resorted to.

DOUGLAS, J.: This case is before us on a hearing, being originally reported in 126 N. Car. 971, 36 S. E. Rep. 352. We have again given it careful consideration, and have been forced to the same conclusions announced in our former opinion. It seems useless to again discuss the principles involved, as they are few and simple, as the case is viewed by us. The plaintiff had a contract of insurance with the defendant, which the latter seems to have violated in its most essential features, with the result of having destroyed its value to the plaintiff, But it is said that the plaintiff made such contract of insurance with a mutual insurance association, of which he was a member, and by virtue of such membership; and that he is, therefore, bound by all such rules and regulations as may be thereafter lawfully adopted. "Lawful adoption" may mean much or little. Rules may be adopted under the forms of law that might nevertheless be so unreasonable and inequitable as to be clearly beyond any possible contemplation of law. In any event, such rules can never have any greater force than the law that authorizes their adoption; and, if this has the effect of impairing the obligation of a contract, it is void by constitutional inhibition. But it is said that the plaintiff, upon entering the association, agreed, expressly or impliedly, that changes might be made in its constitution and by-laws, and is bound thereby. We have no evidence that he agreed that such changes might be made as were made, and we have no idea that he ever intended to place it within the power of the association to break his contract at pleasure, or render it utterly valueless by subsequent stipulations or regulations adopted without his consent. A mere general consent that the constitution and by-laws may be amended applies only to such reasonable regulations as may be within the scope of its original design. We must again repeat what we said in our former opinion: "Whatever may be the power of a mutual association to change its by-laws, such changes must always be in furtherance of the essential objects of its creation, and not destructive of vested rights."

It is urged by the defendant that, if the plaintiff is entitled to any relief, it is not by recovery of the premiums he has paid, but by *mandamus* for reinstatement. This remedy is not demanded by the plaintiff, nor does it seem practicable to us. It is true, we might issue the *mandamus* to a foreign corporation having its general offices in New York; but how to make such a *mandamus* effective is a different question, the solution of which is not at all clear to us. Moreover, in the present instance the plaintiff, Strauss, is now dead. Much stress has been laid upon the fact that the Supreme Court of Minnesota, in Ebert against this defendant (83 N. W. Rep. 506), while agreeing with us upon the main question of the right of recovery, differs with us as to the measure of damage. We are much impressed with the views of the court upon that point, which have much to commend them as theoretical propositions; but we are equally impressed with the frank admission of the court as to the difficulty of their practical application. Our own rule, even in our own minds, falls short of theoretical perfection; but, after most careful consideration, we are unable to find a better. The impaired health of the insured, or his having passed the insurable age, would present complications practically insurmountable in the actual trial of an action. Moreover, the defendant claims that the plaintiff's insurance has cost more than he has paid in, and therefore his recovery would be nothing. The plaintiff would have no means of disproving the alleged cost of his past insurance, the proof of which would be exclusively in the possession of the defendant. He might cross-examine the defendant's witnesses, or demand its books and papers; but if he got them, what could he do with them? It seems to have taken the defendant several years to find out that the plaintiff's insurance was costing more than his premiums, and this it did only with the assistance of the insurance commissioner of New York and expert actuaries. With or without such assistance, what chance would the average juror have of mentally digesting five hundred pages of insurance statistics? All actions must be capable of a practical determination, with a reasonable certainty of substantial justice; and rules of law must be adjusted to that end, even if, in exceptional cases, they fall short of the full measure of ideal right. A distinguished jurist has said: "Indeed, one of the remarkable tendencies of the English common law upon all subjects of a general nature is to aim at practical good, rather than at practical theoretical perfection; and to seek less to administer justice in all possible cases than to furnish rules which shall secure it in the common course of human business." Story, Eq. Jur., p. 115. The rule we have followed is not new. It was laid down by Chief Justice Pearson in Braswell v. Insurance Co., 75 N. Car. 8, and has been uniformly followed in this state for the past 25 years. But it is said that this rule was intended to apply to "old line" companies, and not to mutual associations. Where is the essential difference in principle or in its practical result? Both companies pay back only what they have received, with legal interest thereon, and neither company is permitted to retain anything for the cost of past insurance. If the mutual association receives less, it pays back less. If the old time company collects more than the actual cost of insurance, it pays back that much more, and loses its surplus, as well as its cost of insurance. As we see no reason to change our former judgment, the petition to rehear is denied. Petition dismissed.

NOTE. — *Beneficial Associations—Right to Alter, Repeal or Amend By Laws—Must Not Impair Vested Rights.*—Of course, a benefit society, like any other society, may alter and repeal its by laws. In incorporated associations this right is implied from the express power to enact by laws. Supreme Lodge v. Knight, 117 Ind. 497. But one very important limitation of this right is that it must not impair rights which have become vested. Borgards v. Insurance Co., 79 Mich. 440; Wist v. Grand Lodge, 22 Oreg. 271, 29 Am. St. Rep. 603; Supreme Lodge v. Malta, 95 Tenn. 157; Morrison v. Insurance Co., 59 Wis. 166; Hobbs v. Association, 82 Iowa, 107, 31 Am. St. Rep. 466; Stohr v. Society, 82 Cal. 557; Becker v. Society, 144 Pa. St. 232. There is no controversy of any importance over the rule of limitation just announced, but its practical application appears to be a most difficult undertaking, the decisions being in apparent conflict over the question as to what are vested rights in such cases. The right must be a property right, it must have accrued in the sense that it must not be something merely in prospect In other words, an amendment must not affect a present right of property. Thus, after a member's death an association cannot, by adopting a new article or repealing the old one, relieve itself of the obligation to pay to the widow benefits which had become fixed by death. Gundlach v. Association, 4 Hun (N. Y.), 339. But where the value of a certificate was reduced by a by-law creating another class upon more advantageous terms from a prospective two thousand dollars to one hundred and seventy three dollars, the beneficiary was not allowed to recover the difference. Supreme Lodge v. Knight, 117 Ind. 489. The question of whether a provision for sick benefits in force at the time of the contract of membership can be reduced by subsequent amendment passed before the sickness of the member is generally answered in the affirmative. The New York courts vacillated over this question for some time before they came to the same conclusion. A study of the case from this state is interesting and profitable. Gundlach v. Association, 4 Hun (N. Y.), 339; McCabe v. Society, 21 Hun (N. Y.), 149; Poultney v. Backman, 62 How. Pr. 466, 10 Abb. N. Cas. (N. Y.) 252, reversed 31 Hun, 49. See also St. Patrick's Society v. McVey, 92 Pa. St. 510. In the case of Becker v. Beneficial Society, 144 Pa. St. 232, 27 Am. St. Rep. 624, will be found a strong opinion against the right of a benefit society to reduce the amount of benefits agreed to be paid on the death of the member by subsequent by-law. A contrary view, however, is expressed in the case of Fagan v. Mutual Society, 46 Vt. 362.

Remedy of Member of Benefit Society Unjustly Expelled or Whose Contract is Violated.—On the question whether a benefit society can restrict the right of its members to sue, the authorities are

divided. Some hold to the affirmative. Fillmore v. Great Camp, 103 Mich. 437; Osceola Tribe v. Schmidt, 57 Md. 98; Hembeau v. Great Camp, 101 Mich. 161, 45 Am. St. Rep. 400. Other authorities hold such restriction to be void on grounds of public policy. Mulray v. Knights of Honor, 28 Mo. App. 463; Austin v. Searing, 16 N. Y. 112; Olery v. Brown, 51 How. Pr. 92; Supreme Council v. Garrigus, 104 Ind. 133, 54 Am. Rep. 298.

It is the general rule that where a member of a beneficial association is illegally expelled or deprived of benefits to which he was entitled as a member of the order, and it does not appear that he had any redress within the association, a court of equity will inquire into the reasonableness and propriety of the society's action and afford such relief as the case warrants. Olery v. Brown, 51 How. Pr. (N. Y.) 92. Thus, when a member of a beneficial society has been denied his benefits and illegally expelled, equity will restore him to membership and compel an accounting. Glover v. Lodge, 1 Del. Co. Rep. (Pa. 1882) 317. The most general remedy in cases where a member of a beneficiary association has been wrongfully expelled therefrom is to compel his reinstatement by *mandamus*. Meurer v. Association, 95 Mich. 451, 54 N. W. Rep. 954; Lavalle v. Societe, 17 R. I. 680, 24 Atl. Rep. 467; Otto v. Union, 75 Cal. 308; State v. Adams, 44 Mo. 570; Manning v. Club, 63 Tex. 166, 51 Am. Rep. 639; Savannah Cotton Exchange v. State, 54 Ga. 668; Sibley v. Club, 40 N. J. L. 295; Evans v. Club, 50 Pa. St. 107; People v. Union, 118 N. Y. 101.

In such cases, however, the member cannot resort to the courts for reinstatement without first exhausting the remedies provided by the constitution and by laws of the society, and this though the order of expulsion be void. People v. Order of Foresters, 162 Ill. 78, 44 N. E. Rep. 401; Screwmen's Assn. v. Benson, 76 Tex. 552, 13 S. W. Rep. 379; State v. Knights, 10 Wkly. L. Bul. (Ohio) 2. In Missouri this latter rule is not adhered to, and in such cases it is not incumbent on the member whose rights have been violated to take steps to exhaust all remedies within the order or to have it reversed in a higher judicatory. Hoeffner v. Grand Lodge, 41 Mo. App. 30; Glasdon v. Knights of Pythias, 50 Mo. App. 45. Whether an action for damages can be maintained in such cases is a point much controverted and not clearly settled. The court in the principal case holds this to be the most practicable remedy in many cases. It is sustained by the following authorities: Ludowiski v. Benevolent Society, 29 Mo. App, 337; Dilcher v. Church, 53 N. Y. 103; Koppstein v. Lipu, 28 Ohio St. 665. It is opposed by the following authorities: Lovalen v. Society, 17 R. I. 680, 24 Atl. Rep. 467; Peyre v. Mutual Relief Society, 90 Cal. 240; Ebert v. Association, 83 N. W. Rep. (Minn. 1900) 506. The last case sums up the reason for holding a beneficial association not liable in damages in such cases in the following language: "Purely fraternal benefit associations are not liable in damages for the unlawful cancellation of a membership, because such a corporation acts purely as a trustee to collect and distribute a sick or death fund, and has no other fund, and no power to collect any money except to meet such a payment."

JETSAM AND FLOTSAM.

IS IT PERMISSIBLE FOR A LAWYER TO CALL A WOMAN A LIAR.

A Chicago paper recently published a criticism of Mr. Albert S. Barnes, assistant states attorney, on an incident occuring in a recent trial in which one of the attorneys in the case denounced one of the opposing witnesses, who was a woman, as a "liar." Mr. Barnes says:

"I am asked if there is anything in the code of ethics of the legal profession which permits a lawyer, in court, to call a woman, no matter what her character may be, a liar. I do not pretend to be an authority on legal ethics, although I have decided opinions as to what constitutes a gentleman, at any time and in any place. Moral ethics forbids a man, lawyer or no lawyer, from addressing a woman as a liar and I should say that legal ethics did likewise.

"In any position in life a woman is more or less defenseless. Her sex, her training, her habits, her physical weakness leave her without many of those elements for resistance that a man possesses. But in court, interested in a case, either as witness or one of the principals, she is even more helpless than elsewhere. She is not familiar with legal procedure. Few, if any, of her own sex are about her. Man's ways, man's laws, man's authority is over her more strikingly than in any other position in life. Her natural timidity at being placed in strange attitudes overwhelms her and she sits shrinking from dangers, apprehended if not seen. Hence the grievous shock to her sensibilities if under such circumstances she is denounced as a liar. Her natural protectors are not by her side, perhaps; if they were, they could show no resentment without displeasing the court. She must take the blow and suffer. I do not believe, to the honor of the legal profession, that such an insult is justified. In the case at question—that of Miss Knabjohann—a more truthful woman never came under my notice. I found her straightforward, womanly, truthful at all times. This made the reflection upon her veracity particularly unwarranted, because in the entire trial (if it could be justifiable) nothing occurred to justify the aspersion.

"It is permissible in courts of law for an attorney to analyze evidence of witnesses; to take the evidence bit by bit and from it to say to the jury or the court that on its face it is false or that a falsehood has been told. But in this particular case no evidence existed of perjury or lying, and the lie direct was given without provocation on the part of the evidence of the young woman who suffered from the charge. Its effect on the jury was particularly noticeable. Jurymen like the rest of us, have mothers, wives, sweethearts. They carry in their bosoms the same innate respect, chivalry, admiration for womanhood that we do. They were looking into the face of the speaker for the defense when he delivered his invective. Their eyes instantly fell, then raised and rested, not upon his face, but upon that of the woman wrongfully accused. It was palpable then and there that their manhood revolted; that their sympathies instantly went out to her; that if the charge had been ten thousand times true they did not justify the conduct of that manhood which call a woman a liar under any circumstances.

"It is the tendency of judges, juries and attorneys to uphold the hands of woman; to throw extraordinary safeguards about her to keep her still the ideal of the best manhood; the guardian of the cradle; the theme of the song and poem; the one thing that makes the life better and purer for us all. This tendency cannot be made too strong. It should be as powerful in private life as in public. I believe the legal profession with few exceptions means that it shall be so."

CORRESPONDENCE.

EQUITABLE ASSIGNMENT OF INTERESTS IN JUDGMENT FOR PERSONAL INJURY.

To the Editor of the Central Law Journal:

In a recent issue (53 Cent. L. J. 245), in treating of assignment of judgments, you say: "The assignment of an interest in a right of action for a personal injury which is to be prosecuted in the name of the assignor, with an agreement to assign a corresponding interest in the judgment which might be recovered in the future, is equivalent to an equitable assignment of the specified interest in the judgment the moment it is perfected, and binds all parties having notice or knowledge of the same. North Chicago Street Ry. Co. v. Ackley, 58 Ill. App. 572," adding that the rule is different in Missouri.

Now, as a matter of fact, this decision was not sustained by the Supreme Court of Illinois. See 171 Ill. 100. In the first place, however, the supreme court did uphold the judgment of the appellate court, and its decision to that effect was published immediately following its rendition in the *Chicago Law Journal Weekly* (the correct name, I think). On rehearing, the supreme court reversed the judgment of the appellate court, but it entirely omitted any reference to the very interesting fact that the court, at first, had reached the opposite conclusion.

Topeka, Kansas. THOMAS R. BEMAN.

BOOK REVIEWS.

WAPLE'S PARLIAMENTARY PRACTICE.

A new edition of the excellent work on parliamentary law has just come under our observation. The subject of this little treatise, now eighteen years old, is a most important one to laymen and lawyers alike. The law of order in deliberative assemblies is not dependent upon arbitrary rules and meaningless forms, as has been often supposed, but is founded upon reason and established precedent. Mr. Waple's book proceeds upon the recognition of the law as a science, and is therefore the more easily mastered and retained in the memory. We regard this book the highest and clearest authority on this important subject. Printed in one volume of 306 pages, duodecimo size, and bound in cloth. Published by Callaghan & Co., Chicago, Ill.

SPELLING ON EXTRAORDINARY REMEDIES.

No subject is more important to litigant or lawyer than the one covered by the work which is the subject of this review. It is a practical treatise on injunctions and other extraordinary remedies including *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, by Thomas Carl Spelling, of the San Francisco Bar. The constant strain and most extended use to which these *extraordinary* remedies have been subjected of late years suggests that they are becoming the most ordinary remedies for a large class of civil wrongs. The remedy by injunction, especially, has, in recent years, come into such common use, that men are tempted to regard the writ as no longer a measure of extraordinary relief in equity, and are in danger of looking at it as a matter of right in law. Mr. Spelling, however, has given proof of his ability to prepare a text-book for the practitioner by treating his subject purely from the side of the law and the lawyer. To show his practical turn of mind and concern for the lawyer, he naively remarks in his preface: "The increasing demand for remedies affording immediate relief from civil wrongs, threatened, or irremediable if redress be long delayed, in the whirl and clash of twentieth century progress, and the greater satisfaction afforded a client, when the practitioner is able to speedily obtain for him such a remedy, constitute the strongest recommendations for a meritorious publication of this character." The purpose of this treatise is therefore thoroughly practical. Mr. Spelling writes with the confidence of one who knows fully all the intricate workings of his subject and is therefore the master not the slave of the mass of authorities, which confuse the ordinary practitioner. On almost any other subject of law a digest of the cases is practically all that a lawyer needs, but on the question of extraordinary remedies, depending, as they do, in great measure on the discretion of the court, no simple list of precedents will suffice. Careful discrimination and analysis of decided cases and consideration of equitable and legal questions involved are needed, and these by a man competent for his work. In this regard Mr. Spelling's work takes rank as one of the highest authorities on the law of extraordinary remedies to which the profession has any access. The revised edition has been greatly enlarged and carefully revised. It will undoubtedly commend itself to the bench and bar throughout the country. Printed in two volumes of 1894 pages and bound in the best quality of law sheep. Published by Little & Brown & Co., Boston, Mass.

BOOKS RECEIVED.

The American State Reports, Containing the Cases of General Value and Authority Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States. Selected, Reported, and Annotated, by A. C. Freeman, and the Associate Editors of the "American Decisions." Vol. LXXX. San Francisco: Bancroft Whitney Company, Law Publishers and Law Book Sellers, 1901. Sheep. Price, $4.00. Review will follow.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

1. ABATEMENT—Revival Limitation.—Where an action is not revived within a year, the court may strike it from the docket.—PETERS v. HUFF, Neb., 87 N. W. Rep. 184.

2. ABATEMENT AND REVIVAL—Striking Case from Docket.—Striking action from docket for failure to revive on death of party not equivalent to dismissing case.—PETERS v. HUFF, Neb., 87 N. W. Rep. 184.

3. ACKNOWLEDGMENTS—Corporation—Notary a Stockholder.—It is no ground for collateral attack on a deed to a corporation that the notary public taking acknowledgment was a stockholder.—NATIONAL BUILDING & LOAN ASSN. v. CUNNINGHAM, Ala., 30 South. Rep. 335.

4. ACKNOWLEDGMENT—Omission of Notary's Address.—Under Ballinger's Ann. Codes & St. § 4538, the omission of the notary's place of residence in a certificate of acknowledgment is not a material defect.—GRIFFIN v. CATLIN, Wash., 65 Pac. Rep. 755.

5. ACTION — Parties —Authority—Relief.—Where an action is not authorized by one of the parties plaintiff, no relief should be granted as to him.—TOOLE v. JOHNSON, S. Car., 39 S. E. Rep. 254.

6. ADVERSE POSSESSION—Hitching Horses.—Where for 50 years persons attending a church hitched their horses on adjoining land, such use was not adverse possession which would give the church title.—HEARN v. JONES, Tenn., 64 S. W. Rep. 344.

7. AGRICULTURE—Killing Insects on Trees.—In an action to foreclose a lien on realty for killing insects on the defendant's fruit trees, the fact that the petition contained a prayer for a personal judgment did not vitiate it.—RIVERSIDE COUNTY v. BUTCHER, Cal., 65 Pac. Rep. 745.

8. APPEAL AND ERROR—Ambiguous Instructions.—No reversal will be had for ambiguities in instructions in a criminal case, where it is clear the instructions as an entirety did not prejudice appellant and the verdict was justified by the evidence.—MUSSER v. STATE, Ind., 61 N. E. Rep. 1.

9. APPEAL AND ERROR—Attorney's Fees.—Where no attempt was made to prove attorney's fees below, they will not be considered on appeal.—SWAIN v. WEBRE, La., 30 South. Rep. 331.

10. APPEAL AND ERROR—Bonds.—Where two appeals are granted in one order and one bond is filed, the order and bond suffices for one appeal, though the other is dismissed.—MACKIN v. WILDS, La., 30 South. Rep. 357.

11. APPEAL AND ERROR — Conflicting Evidence.—Where the evidence is conflicting, the findings of the lower court will not be disturbed.—RIDDELL v. BROWN, Wash., 65 Pac. Rep. 758.

12. APPEAL AND ERROR—Denying Order of Distribution.—An order denying petition for distribution on the ground that petitioner is not an heir held appealable.—MORTON'S ESTATE v. MORTON, Neb., 87 N. W. Rep. 180.

13. APPEAL AND ERROR — Dismissal —"Final Judgment."—Where action is against four persons jointly, a judgment dismissing it as to three on demurrer is final and appealable.—KOLLOCK v. WEBB, Ga., 39 S. E. Rep. 389.

14. APPEAL AND ERROR—Exceptions—Requisites.—Complaining of the overruling of certain exceptions, numbering them and referring to the transcript pages, is too general for consideration.—YOUNG v. YOUNG, Tenn., 64 S. W. Rep. 319.

15. APPEAL AND ERROR—Failure to File Authorities.—Appeal reinstated where failure to file points and authorities was caused by sickness of attorneys.—BAKER v. IRVINE, S. Car., 39 S. E. Rep. 252.

16. APPEAL AND ERROR—Finding of Fact.—Findings on questions of fact will not be reviewed without a bill of exceptions.—UNIVERSITY OF MICHIGAN v. MCGUCKIN, Neb., 87 N. W. Rep. 180.

17. APPEAL AND ERROR—From Nunc Pro Tunc Order.—An appeal lies from a *nunc pro tunc* order amending a decree entered on default, where the *nunc pro tunc* order was void.—HOOVER v. HOOVER, Oreg., 65 Pac. Rep. 796.

18. APPEAL — Remanding — Duty of Trial Court.—Where a judgment of conviction had been affirmed by the appellate court, the lower court on remand cannot vacate it.—STATE v. BOYCE, Wash., 65 Pac. Rep. 763.

19. APPEAL AND ERROR—Special Findings.—Where a case is tried to the court, and a special finding of facts is not asked, and bill of exceptions fail to show exceptions taken to the judgment, it cannot be reviewed.—WESTERN UNION TEL. CO. v. WHITE, Ala., 30 South. Rep. 279.

20. APPEAL AND ERROR—Sufficiency of Plea.—Where no question is made below as to sufficiency of a plea, none can be made on appeal.—SMITH v. CARMACK, Tenn., 64 S. W. Rep. 372.

21. ARREST — Escaped Convict.—A sheriff has authority to arrest an escaped convict at any time, and is allowed reasonable time thereafter within which to deliver such convict to the hirer of county convicts.—MCQUEEN v. STATE, Ala., 30 South. Rep. 414.

22. ASSIGNMENTS—Agreement as to Probate of Will.—Agreement by executrix and residuary legatee with attorneys as to probate of will held not an equitable assignment of a portion of her interest under the will, so as to authorize them to compel an accounting by her as executrix.—IN RE SHAFER, N. Y., 71 N. Y. Sup. 1033.

23. ASSIGNMENT - Contingent Fee.—In a suit to set off a judgment, where the party obtaining it had agreed to give his attorneys 40 per cent. of the judgment recovered, held that there was an equitable assignment *in præsenti* to defendant's attorneys.—HARRIS v. HAZELHURST OIL-MILL & MFG. CO., Miss., 30 South. Rep. 273.

24. ASSIGNMENT FOR BENEFIT OF CREDITORS—Insurance Policies.—Where a warehouseman, includes certain insurance policies in a trust deed for benefit of creditors, their rights will be governed thereby.—SMITH v. CARMACK, Tenn., 64 S. W. Rep. 372.

25. ATTORNEY AND CLIENT—License of Attorney.—A complaint against a lawyer, charging him with engaging in practicing law, without having procurred or paid a license, held not demurrable.—ALDRICH v. CITY OF CULLMAN, Ala., 30 South. Rep. 415.

26. ATTORNEY AND CLIENT — Lien — Waiver. — The parting with possession of a client's papers by an attorney waives the latter's lien for his compensation given thereon.—GOTTSTEIN v. HARRINGTON, Wash., 65 Pac. Rep. 753.

27. BAILMENT—Hiring Animals—Conversion.—Where a person hires an animal for a specified work and for a definite time, and uses it for other labor and for a longer time, it constitutes conversion.—LEDBETTER v. THOMAS, Ala., 30 South. Rep. 342.

28. BANKRUPTCY —Discharge—Incorrect Schedule.—Debt held not discharged, where a schedule gives a debtor's name incorrectly.—LISKUM v. KRAUS, N. Y., 71 N. Y. Supp. 1022.

29. BILLS OF LADING -Varying by Parol Evidence.—Terms of bill of lading to the extent that it is a contract cannot be charged by parol evidence.—SONIA COTTON OIL CO. v. THE RED RIVER, La., 30 South. Rep. 303.

30. BUILDING AND LOAN ASSOCIATIONS—Insolvency.—A building and loan association is insolvent when it cannot pay back to its stockholders the amount of their contributions.—BINGHAM v. MARION TRUST CO., Ind., 30 South. Rep. 29.

31. BUILDING AND LOAN ASSOCIATION—Purchase of Stock.—A purchase of paid-up stock in a building and loan association is not a loan, and the purchaser has no rights superior to other members on insolvency.—BINGHAM v MARION TRUST CO., Ind., 61 N. E. Rep. 29.

32. BUILDING AND LOAN ASSOCIATIONS—Receivers.—A receiver of an insolvent building and loan association represents, not only the creditors, but also the stockholders, and must adjust its affairs equitably among them.—BINGHAM v. MARION TRUST CO., Ind., 30 South. Rep. 29.

33. CARRIERS—Negligence—Backing Up.—A carrier, held negligent in backing an engine on a main track without any efficient lookout or warning of its approach.—ST. LOUIS, I. M. & S. RY. CO. v. TOMLINSON, Ark., 64 S. W. Rep. 847.

34. CARRIERS—Refusal to Accept Goods.—On refusal of consignee to accept goods, the master of the carrier must place them at the expense of the consignee, where they will not be exposed to loss.—SONIA COTTON OIL CO. v. THE RED RIVER, La., 30 South. Rep. 363.

35. CARRIERS—Violating Instructions.—Where carrier was instructed to carry goods in bond, taking them out of bond is an interference with plaintiff's right, rendering the carrier responsible for actual damages.—SMITH BROS. & CO. v. NEW ORLEANS & N. E. R. CO., La., 30 South. Rep. 265.

36. CERTIORARI—Court of Appeals.—A litigant cast in the court of appeals must apply there for rehearing, but apply to supreme court for writ of review.—COLOMB v. ROLLING, La., 30 South. Rep. 298.

37. CHAMPERTY AND MAINTENANCE—Litigious Claims.—Evidence held to show that plaintiff's claim is a litigious one.—MEANS v. ROSS, La., 30 South. Rep. 300.

38. CHAMPERTY AND MAINTENANCE—Litigious Claims.—Where claim is transferred without consideration, it is litigious, entitling defendant to release from payment.—INDEPENDENT ICE & DISTILLED WATER MFG. CO. v ANDERSON, La., 30 South. Rep. 272.

39. CHARITIES—Failure of Trust.—Where testator bequeathed money to trustees to establish a home for poor orphans, on petition of persons showing an incorporation for such purpose, held, that the trust fund would be given to such corporation.—IN RE STEVENS' ESTATE, Pa., 49 Atl. Rep. 985.

40. CHATTEL MORTGAGES—Probating—Indexing.—A chattel mortgage for less than $100 need not be probated before indexing.—MILFORD v. AIKEN, S. Car., 39 S. E. Rep. 238.

41. CONFUSION OF GOODS—Liability of Vendor.—Vendor's privilege on machinery put in sugar house held lost if he permits it to be sold confusedly with a mass of other things.—PAYNE v. BUFORD, La., 30 South. Rep. 263.

42. CONSPIRACY—Common Design—Proof.—It was proper, after defining conspiracy, to charge that it is sufficient if the common design be shown by circumstantial evidence.—MUSSER v. STATE, Ind., 61 N. E. Rep. 1.

43. CONSPIRACY—Description.—It is sufficient to describe the crime of burglary by its name, where the offense charged is conspiracy to commit such crime.—STATE v. SLUIZ, La., 30 South. Rep. 298.

44. CONSPIRACY — Instruction—Reasonable Doubt.—Where accused was indicted jointly with another for murder, it was not necessary that the elements or facts constituting the crime of conspiracy should be proven beyond reasonable doubt.—MUSSER v. STATE, Ind., 61 N. E. Rep. 1.

45. CONSTITUTIONAL LAW—Death Penalty—Class Legislation.—Code, § 4859, providing that a convict sentenced to imprisonment for life who commits murder must suffer death, held not class legislation.—WILLIAMS v. STATE, Ala., 30 South. Rep. 336.

46. CONSTITUTIONAL LAW—Due Process of Law.—The granting of a new trial for insufficiency of evidence without requiring the trial judge to first pass on that question or to sit with the court considering the same, does not deprive persons of property without due process of law.—GUNN v. UNION R. CO., R. I., 49 Atl. Rep. 999.

47. CONSTITUTIONAL LAW—Farm Labor Contracts.—Prosecution for breach of farm labor contracts, held not to violate provision of constitution against imprisonment for debt.—STATE v. EASTERLIN, S. Car., 39 S. E. Rep. 250.

48. CONTEMPT—Affidavit — Necessary.—The commitment of petitioner for contempt, without an affidavit presenting the facts constituting the contempt to the court, held illegal.—IN RE COULTER, Wash., 65 Pac. Rep. 759.

49. CONTRACT—Mistake of Fact.—Where an error of fact was the principal cause for yielding consent to a certain contract, relief against it may be had.—CALHOUN v. TEAL, La., 30 South. Rep. 288.

50. CONTRIBUTION—Assignee of Mortgage.—Where an administrator pays and has assigned to him a mortgage owning by him and others to the estate, he may recover from such others their share with attorney's fees.—MORRISON v. WARNER, Pa., 49 Atl. Rep. 983.

51. CORPORATIONS—Foreign Corporations.—Foreign corporation held not liable on renewal notes made by a domestic corporation of a somewhat similar name given for debts contracted before the organization of the foreign corporation.—GINSBURG v. UNION CLOAK & SUIT CO., N. Y., 71 N. Y. Sup. 1080.

52. CORPORATIONS—Foreign Corporation—Authority.—Failure of foreign corporation to file certificate authorizing it to do business in the state does not invalidate its contracts made within the state.—NORTH MERCER NATURAL GAS CO. v. SMITH, Ind., 61 N. E. Rep. 10.

53. CORPORATIONS — Inspection of Books.—That a stockholder demanding inspection of books is unfriendly with the officers, and owns stock in a rival corporation, held not ground for refusal.—COBB v. LAGARDE, Ala., 30 South. Rep. 326.

54. CORPORATIONS—Inspection of Books—Mandamus. President and general manager of an industrial corporation held to have sufficient control over its books to authorize *mandamus* requiring him to allow stockholder to inspect them.—COBB v. LAGARDE, Ala., 30 South. Rep. 326.

55. CORPORATIONS—Lease—Dissenting Stockholder.—Lease of corporate property on ground that it was necessary, as capital to run the business, can be set aside at suit of non assenting stockholder.—PARSONS V. TACOMA SMELTING & REFINING CO., Wash., 65 Pac. Rep. 765.

56. CORPORATIONS—License of Foreign Corporation.—License of foreign corporation to be paid city of New Orleans must be calculated on the business done in such city.—CITY OF NEW ORLEANS v. PENN MUT. LIFE INS. CO., La., 30 South. Rep. 254.

57. CORPORATIONS—Notice to President.—Notice to a bank president in an individual transaction held insufficient to charge the bank with notice.—SMITH v. CARMACK, Tenn., 64 S. W. Rep, 372.

58. CORPORATIONS — Voting Stock in Another Corporation.—Though the articles of a corporation express a power to own stock in another corporation, such stock cannot be voted at stockholders' meetings.—PARSONS v. TACOMA SMELTING & REFINING CO., Wash., 65 Pac. Rep. 765.

59. COSTS—Attorney's Fees.—Fees allowed attorney representing tax collector, to be paid by unsuccessful tax register, are costs.—LIQUIDATING COM'RS OF NEW ORLEANS WAREHOUSE CO. v. MARRERO, La., 30 South. Rep. 305.

60. COURTS—Recess to Day Named.—Where judge orders that the court take a recess until a named day,

it is in lawful session when it assembles, though there is no order calling a special term.—COCHRAN V. STATE, Ga., 39 S. E. Rep. 332.

61. COURTS — Stenographers — Fees.— Reporter appointed to record the testimony on preliminary examination held not entitled to fees for transcribing his notes where defendant was discharged.—MATTINGLY V. NICHOLS, Cal., 65 Pac. Rep. 748.

62. CRIMINAL EVIDENCE — Acquittal of One Joint Criminal.—Where two persons jointly indicted for murder are tried separately, the record of the acquittal of one is not admissible in evidence on the trial of the other.—MUSSER V. STATE, Ind., 61 N. E. Rep. 1.

63. CRIMINAL EVIDENCE — Irrelevant Evidence. — Where irrelevant evidence has been introduced by the state, defendant may introduce in rebuttal other evidence, though also irrelevant.—LONGMIRE V. STATE, Ala., 30 South Rep. 413.

64. CRIMINAL EVIDENCE—Non-experts on Insanity.—Opinions of non-experts as to insanity of accused held admissible only in connection with testimony as to the facts on which opinions are based.—STATE V. SMITH, La., 30 South Rep. 248.

65. CRIMINAL EVIDENCE—Res Gestæ.—Appeal made by the deceased, who was killed in an altercation between defendant and her husband, to defendant, held admissible in prosecution of defendant for the killing, as *res gestæ*.—HALL V. STATE, Ala., 30 South. Rep. 422.

66. CRIMINAL LAW — Instructions.— The use of the words "assumption" and "supposition" as synonyms of "hypothesis" held proper.—STATE V. HARRAS, Wash., 65 Pac. Rep. 774.

67. CRIMINAL TRIAL—Change of Venue—Costs—Counties.—On change of venue in a criminal case, the county from which the venue is changed is not liable for costs.—KERSHAW COUNTY V. RICHLAND COUNTY, S. Car., 39 S. E. Rep. 263.

68. CRIMINAL TRIAL — Continuance — Discretion. — Discretion of trial judge in denying a continuance will not be reviewed where the motion was apparently not made in good faith.—COCHRAN V. STATE, Ga., 39 S. E. Rep. 332.

69. CRIMINAL TRIAL—Remittitur.—Filing of a *remittitur* in the court below invests it with jurisdiction.—KNOX V. STATE, Ga., 39 S. E. Rep. 330.

70. DAMAGES—Excessive.—Where there was evidence that stock sold for 50 cents per share near the time the demand for it was made, a verdict for $5,000 damages for a failure to deliver 10,000 shares according to contract held not excessive.—SAUNDERS V. UNITED STATES MARBLE CO., Wash., 65 Pac. Rep. 782.

71. DAMAGES—Liquidating Damages.—An agreement to repay a certain sum on breach of a contract to maintain a dike to protect land from tide water held to be a stipulation for liquidating damages.—JENNINGS V. MCCORMICK, Wash., 65 Pac. Rep. 764.

72. DEEDS — Delivery.—Where the grantee in an unwitnessed deed found among his papers at his death never claimed any right under it, though he lived 20 years after its date, a finding that it was never delivered is justified.—GALBREATH V. GALBREATH, Tenn., 64 S. W. Rep. 361.

73. DEPOSITIONS—Supposed Depositions.—The court may grant a rehearing, and permit the retaking of suppressed depositions, there was an understanding with opposing counsel that the depositions might be read, which prevented their retaking. — YOUNG V. YOUNG, Tenn., 64 S. W. Rep. 319.

74. DETINUE—Amount of Recovery.—Where a bill in detinue to recover the value of certain articles specifies them and fixes a total value, recovery must be limited to the amount stated in the bill.—YOUNG V. YOUNG, Tenn., 64 S. W. Rep. 319.

75. DISCOVERY—Interrogatories.—Answer of party to interrogatories on facts and articles as to verbal sale of an immovable, which negative such sale, cannot be contradicted by parol.—WRIGHT-BLODGETT CO. V. ELMS, La., 30 South Rep. 311.

76. EASEMENTS—Drain Servitude.—Servitude of drain is established where it is located for more than 20 years under a written agreement.—SWAIN V. WEBRE, La., 30 South Rep. 331.

77. EASEMENTS—Prescription.—Prescription will not begin to run against a servitude until it is shown that from the time pleaded the servitude was not exercised.—SWAIN V. WEBRE, La., 30 South. Rep. 331.

78. EJECTMENT — Church Trustees.—Where land is conveyed to trustees for the benefit of certain churches, ejectment to recover the land should be brought by the holders of the legal title, and not by one of the churches.—HEARN V. JONES, Tenn., 64 S. W. Rep. 344.

79. EJECTMENT — Subsequent Grantee. — Where an alleyway was reserved by a deed in partition, a subsequent grantee can bring ejectment against the owner of adjoining lots out of which it was reserved.—REMSON V. HYAMS, N. Y., 71 N. Y. Supp. 1002.

80. ELECTION—Conclusiveness.—Validity of election annexing certain district to a town cannot be questioned at a subsequent dispensary election.—HUNTER V. SENN, S. Car., 39 S. E. Rep. 235.

81. ELECTIONS — Designating Precincts.—The fact that a council followed the wrong provision in designating precincts for voting, held not to invalidate the election; such provision being merely directory.—PEOPLE V. CITY OF LOS ANGELES, Cal., 65 Pac. Rep. 749.

82. ELECTION — Liquor Tax—Inspectors.—That inspectors at a liquor tax election selected one of their number as poll clerk in violation of statute held not to render election void.—PEOPLE V. PIERSON, N. Y., 71 N. Y. Supp. 993.

83. ELECTION—Poll Lists Not Subscribed.—That the poll lists in certain districts were not subscribed as required by statute did not render the election void.—PEOPLE V. PIERSON, N. Y., 71 N. Y. Supp. 993.

84. ELECTIONS—Registration.—Statute did not provide for registration, as directed by the constitution, held not to render election invalid, where as a matter of fact the voters were registered.—HUNTER V. SENN, S. Car., 39 S. E. Rep. 235.

85. EMBEZZLEMENT—Instructions.—In a prosecution for embezzlement, an instruction that, to constitute larceny, there must be a felonious taking with intent to steal, was not prejudicial to defendant.—PEOPLE V. GORDON, Cal., 65 Pac. Rep. 746.

86. EMINENT DOMAIN—Public Purposes.—Evidence in proceedings to condemn land for water supply held to show that such land was in no way used for public purposes.—VILLAGE OF FULTONVILLE V. FONDA WATER-WORKS CO., N. Y., 71 N. Y. Supp. 1009.

87. EQUITY — Enjoining — Foreclosure.—On bill by mortgagor to enjoin foreclosure of mortgage and for its cancellation, register's finding as to disputed question of usury is *prima facie* correct.—WARD V. BANK OF ABEVILLE, Ala., 30 South. Rep. 441.

88. ESTOPPEL—Illegitimacy.—In proceedings for the distribution of an estate, a daughter held estopped from raising the question of the illegitimacy of others claiming a share therein as children of the deceased. —SCOTT V. MATHEWS, Wash., 65 Pac. Rep. 756.

89. ESTOPPEL—Recitals in Will.—A married woman making nuncupative will by public act held not estopped by recitals that certain community property is the separate property of her husband.—SUCCESSION OF MULLER, La., 30 South. Rep. 329.

90. EVIDENCE—Marriage License.—Where a marriage license, bond, and certificate are introduced, a charge is proper that a marriage record is only a circumstance, and not conclusive evidence of the facts recited therein.—WOODS V. MOTEN, Ala., 30 South. Rep. 32

91. EVIDENCE—Res Inter Alios Acta.—Proceedings *res inter alois acta* held not to prejudice rights of one not a party.—SWAIN v. WEBRE, La., 30 South. Rep. 331.

92. EVIDENCE — Vendor's Lien — Priority.—Vendor, having lost his privilege, has no interest to contest the rank of other mortgage and privilege creditors on proceeds of sale on execution.—PAYNE v. BUFORD, La., 30 South. Rep. 263.

93. EVIDENCE—Written Contract—Parol.—A person in possession of writings from another which do not *per se* evidence a sale cannot eke out such writings by parol evidence.—WRIGHT-BLODGETT CO. v. ELMS, La., 30 South. Rep. 311.

94. EVIDENCE—Written Contract—Parol Evidence.—Where written contract does not show the entire transaction, parol evidence held admissible.—VIRGINIA-CAROLINA CHEMICAL CO. v. MOORE, S. Car., 39 S. E. Rep. 346.

95. EXECUTION—"Chilling the Biddin."—Evidence held to justify setting aside a sale on execution for chilling the bidding.—TOOLE v. JOHNSON, S. Car., 39 S. E. Rep. 254.

96. EXECUTION—Unlawful Seizure.—Seizing creditor held not at fault in assuming that a judgment debtor was still the owner of certain personalty, so as to render him liable to the vendee thereof for unlawful seizure.—LABAT v. WALDMEIER, La., 30 South. Rep. 262.

97. EXECUTORS AND ADMINISTRATORS—Assignment of Claims.—Where surety pay claim pending against estate of principal, he may take an assignment of the claim, and proceed in the name of the original claimant or in his own name.—HARMAN'S ESTATE v. HARMAN, Neb., 87 N. W. Rep. 177.

98. EXECUTORS AND ADMINISTRATORS — Claims — Judgment.—A judgment docketed against an intestate in his lifetime cannot be rejected, and referred under the statute.—IN RE BROWNE, N. Y., 71 N. Y. Supp. 1034.

99. EXECUTORS AND ADMINISTRATORS—Cost of Opposition.—Administrator will not be required to pay costs of opposition as to his entire account because it is sustained as to some of the items.—SUCCESSION OF CONERY, La., 30 South. Rep. 294.

100 FRAUD—Unsound Food.—To recover for fraud in the sale of unsound food, plaintiff must show knowledge of unsoundness by seller at the time of sale.—POAG v. CHARLOTTE OIL AND FERTILIZER CO., S. Car., 39 S. E. Rep. 345.

101. FRAUDULENT CONVEYANCES—Directing Verdict.—Directing verdict in favor of the purchasers, in an action to recover possession of the goods from attaching creditors of the vendor, held proper.—BERLIN v. VAN DE VANTER, Wash., 65 Pac. Rep. 756.

102. FRAUDULENT CONVEYANCES—Nominal Consideration.—A conveyance upon the nominal consideration of one dollar and an agreement for the support of the grantor for life held fraudulent as to creditors.—SPIERS v. WHITESELL, Ind., 61 N. E. Rep. 28.

103. GAMING—Faro Game.—What is meant by a "banking house," within Rev. St. § 911, prohibiting the game of faro at such a place, held sufficiently defined.—STATE v. HUNTER, La., 30 South. Rep. 261.

104. HABEAS CORPUS—Contempt Proceedings.—The legality of an order committing petitioner for contempt in not applying certain money to the satisfaction of a judgment against him may be inquired into on petition for a writ of *habeas corpus*.—IN RE COULTER, Wash., 65 Pac. Rep. 759.

105. HIGHWAYS—Assessments—"Front-Foot" Rule.—Act May 23, 1889, authorizing the assessment of cost of street paving on abutting property by front-foot rule, held not a taking of property without due process of law in the case of original paving.—CITY OF HARRISBURG v. MCPHERRAN, Pa., 49 Atl. Rep. 988.

106. HOMICIDE—Evidence.—In a prosecution of a third person for the murder of a wife, evidence that the husband and wife did not live happily together was inadmissible.—HALL v. STATE, Ala., 30 South. Rep. 422.

107. HOMICIDE—Evidence—Stolen Money.—On prosecution for murder committed for purpose of robbery, held proper to admit evidence that a joint defendant had shortly thereafter money of the kind and denomination stolen.—MUSSER v. STATE, Ind., 61 N. E. Rep. 1.

108. HOMESTEAD—Right of Alienation.—A wife may not alien her homestead interest, though her husband has abandoned her.—COUCH v. CAPITOL BUILDING AND LOAN ASSN., Tenn. 64 S. W. Rep. 340.

109. HOMESTEAD—Sale and Right of Redemption.—Under Const. 1879, conveyance of homestead in form of sale..with right of redemption, to secure a debt, will be set aside.—MAXWELL v. ROACH, La., 30 South. Rep. 251.

110. HUSBAND AND WIFE—Community Property.—In establishing assets of community after deduction of debts, only debts of the community, and not debts secured by special mortgage are to be deducted.—SCOVILL v. LEVY'S HEIRS, La., 30 South. Rep. 322.

111. HUSBAND AND WIFE—Community Property.—Property purchased by husband is community property, unless husband manifests an intention to acquire it on his own account.—SUCCESSION OF MULLER, La., 30 South. Rep. 329.

112. HUSBAND AND WIFE—Separation Agreement.—Question whether agreement of separation executed by a husband and wife was a bar to proceeding for support held not reviewable.—COMMONWEALTH v. SMITH, Pa., 49 Atl. Rep. 981.

113. INDICTMENT AND INFORMATION — Sufficiency.—An indictment is not defective by an insertion therein, in addition to the words of the statute, of the words "unlawfully" and "feloniously."—STATE v. JACKSON, La., 30 South. Rep. 309.

114. INFANTS—Consent Decree.—There can be no consent decree ordering partition by licitation where a minor is concerned.—MACKIN v. WILDS, La., 30 South. Rep. 257.

115. INFANTS—Vacating Judgment.—Proceedings by a minor to vacate a judgment erroneously taken against him should be the same as in ordinary action.—MORRISON v. MORRISON, Wash., 65 Pac. Rep. 779.

116. INJUNCTION—Attorney's Fees as Damages.—Whether the defendant in injunction suit can recover on the bond his attorney's fees as damages, and, if so, how much, is to be determined by the facts of each case.—ELMS v. WRIGHT-BLODGETT CO., La., 30 South. Rep. 315.

117. INJUNCTION—Conjectural Profits.—Defendant in action on injunction bond cannot recover conjectural profits as damages.—ELM v. WRIGHT-BLODGETT CO., La., 30 South. Rep. 315.

118. INJUNCTION — Dissolving—Notice.— Under Code Civ. Proc. § 532, a court has no power to dissolve an injunction granted without notice, without first giving notice to the plaintiff.—PAGE v. VAUGHN, Cal., 65 Pac. Rep. 740.

119. INSURANCE—Mortgaged Property.—In an action on an insurance policy, held, that the mortgagee of the property was the insured, and the policy was not invalidated by transfer by the mortgagor.—BOYD v. THURINGIA INS. CO. OF ERFURT, GERMANY, Wash., 65 Pac. Rep. 785.

120. INSURANCE—Trust—Assignee.—A policy covering property held in trust for others is sufficient to put an assignee on inquiry as to what other persons were interested therein.—SMITH v. CARMACK, Tenn., 64 S. W. Rep. 372.

121. INTOXICATING LIQUORS—Election.—Members of town council, signing petition for election under dispensary law, held not thereby disqualified from de-

termining whether petition was properly signed.—HUNTER V. SENN, S. Car., 39 S. E. Rep. 234.

122. INTOXICATING LIQUORS—Liquor Tax - Compelling Payment.—Under statute payment of liquor license tax to township treasurer by county treasurer may be compelled, though the latter has paid such sum to the township supervisors.—KRZYKWA V. KRONINGER, Pa., 49 Atl. Rep. 979.

123. INTOXICATING LIQUORS—Refunding License Fees.—An amendment to prohibition aw providing for refunding the amount paid on licenses, held unconstitutional, in so far as it seeks to refund the licenses.—STATE V. DAVIS, Ala., 30 South. Rep. 344.

124. INTOXICATING LIQUORS—Selling Cider.—It is competent to prove that defendant had sold witness cider which made him "foolish."—STATE V. ROBINSON, S. Car., 39 S. E. Rep. 247.

125. JUDGES—D squalification.—A judge is not disqualified from trying an indictment because he held a court of inquiry and bound the prisoner over.—COCHRAN V. STATE, Ga., 39 S. E. Rep. 337.

126. JUDGMENT—Finding of Jury—Inconsistent Decree.—A finding of a jury in an equitable action, which is not mentioned in the decree, and is inconsistent with the decree as entered, held not to create an estoppel as to such question in a subsequent action.—GLIDDEN V. WHIPPLE, R. I., 49 Atl. Rep. 997.

127. JUDGMENT—Order Nunc Pro Tunc.—The court, after decree of divorce setting aside part of the husband realty "for the use and benefit" of the wife, cannot amend it two years later by a *nunc pro tunc* order vesting a fee in the divorced wife.—HOOVER V. HOOVER, Oreg., 65 Pac. Rep. 796.

128. JUDGMENT—Relief.—Under a prayer for general and special relief, held competent to render judgment for plaintiff for the value of the movable property which was the matter at issue.—INDEPENDENT ICE & DISTILLED WATER MFG. CO. V. ANDERSON, La., 30 South. Rep 270.

129. JUDGMENT—Satisfaction.—Satisfaction by grantee of mortgaged land of deficiency judgment on mortgage assumed by him held not a compromise of joint obligation.—IN RE BROWNE, N. Y., 71 N. Y. Supp. 1034.

130. JURIES—Affidavit of Juror.—Statements in the affidavit of a juror as to remarks made in the jury room will be presumed to be true in the absence of a denial thereof.—STATE V. PARKER, Wash., 65 Pac. Rep. 776.

131. JURY—Initials of Jurymen.—That the initials and not the Christian names of jurors were written on slips prepared, held not ground for quashing the venire in a criminal case.—HALL V. STATE, Ala., 30 South. Rep. 422.

132. JURY—Quash Venire.—Motion to quash the venire, after the jury in a criminal case has been organized and the state's case is ended, is too late.—LONG MIRE V. STATE, Ala., 30 South. Rep. 418.

133. JURY—Relationship—Disqualification.—Act of judge in setting aside jurors because disqualified by relationship, in a criminal case, within the sixth degree, held not erroneous, under Rev. St. § 2403.—STATE V. BROCK, S. Car., 39 S. E. Rep. 359.

134. JURY—Trial by Jury—Right to Waive.—A person indicted for crime punishable at hard labor, who pleads not guilty, cannot waive trial by jury.—STATE V. JACKSON, La., 30 South. Rep. 309.

135. JUSTICES OF THE PEACE—Judgment at Subsequent Term.—A justice of the peace may take the case under advisement at the close of the trial, and a judgment rendered several months thereafter is valid.—AMERICAN TYPE-FOUNDERS CO. V. JUSTICE'S COURT OF SAULSALITO TP., Cal., 65 Pac. Rep. 742.

136 JUSTICES OF THE PEACE—Jurisdiction.—Jurisdiction of magistrate in Greenville county held to extend throughout the entire county.—BAKER V. IRVINE, S. Car., 39 S. E. Rep. 252.

137. LANDLORD AND TENANT—Reasonable Rental.—Where there was no express rental contract, defendant was liable for the reasonable rental value of the land.—ROBBINS V. VOSS, Tex., 64 S. W. Rep. 813.

138. LARCENY—Stolen Property—Presumption.—Where, in a prosecution for theft, the court gives a general charge on circumstantial evidence it is not error to refuse to instruct on presumption arising from possession of stolen property.—STATE V. HARRAS, Wash., 65 Pac. Rep. 774.

139. LIBEL AND SLANDER—Truth as Mitigation.—An instruction that the truth could be received in a prosecution for libel only as a mitigation held error.—STATE V. BROCK, S. Car., 39 S. E. Rep. 359.

140. LICENSES—Legality.—Legality and constitution ality of license held not involved in a suit as to whether return of year's business was too small.—STATE V. PUTNAM, La., 30 South. Rep. 285.

141. LIENS—Accountant—Lien.—An accountant employed to examine books at request of owner has no lien thereon for his services.—SCOTT SHOE MACHINERY CO. V. BREAKER, N. Y., 71 N. Y. Supp. 1028.

142. LIMITATION OF ACTIONS—Setting Aside for Fraud.—Right of action to set aside sale under execution for fraud held to accrue from time of discovery of the fraud.—TOOLE V. JOHNSON, S. Car., 39 S. E. Rep. 254.

143. LIMITATION OF ACTIONS—Trusts.—Action to establish trust in land held not barred by limitations, the trustee not having repudiated the trust.—MORGAN V. TURNER, N. Y., 71 N. Y. Supp. 996.

144. MANDAMUS—Payment of Warrants.—*Mandamus* will not lie to compel the payment of a warrant for recording grants for which no appropriation has been made.—STATE V. CRAIG, Tenn., 39 S. W. Rep. 826.

145. MARRIAGE—Capacity.—Where minds of parties capable of entering into such contract meet in a common consent, there is a valid marriage.—UNIVERSITY OF MICHIGAN V. MCGUCKIN, Neb., 87 N. W. Rep. 180.

146. MASTER AND SERVANT—Contributory Negligence of Servant.—Where workmen employed in loading a ship had used the rigging in ascending to the wharf, a workman placing his weight on a ratline held not guilty of contributory negligence.—MCDONALD V. SVENSON, Wash., 65 Pac. Rep. 789.

147. MASTER AND SERVANT—Labor Contracts.—In prosecution for violation of verbal labor contract, either party may testify as to its terms.—STATE V. EASTERLIN, S. Car., 39 S. E. Rep., 250.

148. MASTER AND SERVANT—Making Known Dangers.—Danger of an employment should be pointed out, and an employee cautioned, in order that he may assume the risks.—DALY V. KIEL, La., 30 South. Rep. 254.

149. MASTER AND SERVANT—Safe Appliances.—An employer, under Laws 1897, ch. 415, § 18, must not only furnish a safe scaffold, but maintain it in that condition.—HEALY V. BURKE, N. Y., 71 N. Y. Supp. 1027.

150. MORTGAGES—Cancellation—On bill by mortgagor to cancel mortgage transferred by mortgagee the transferee is a necessary party.—MARSHALL V. SHIFF, Ala., 30 South. Rep. 335.

151. MORTGAGE—Foreclosure.—Purchaser at foreclosure of an assessment on mortgaged property held accountable to the mortgagee for only the rents and profits received, and a fair rental value of that portion occupied by him.—KRUTZ V. GARDNER, Wash., 65 Pac. Rep. 771.

152. MORTGAGES—Recorder—Cancellation.—Recorder of mortgages can compel parties to resort to the courts to determine whether mortgage should be canceled.—SUCCESSION OF VIARD, La., 30 South. Rep. 246.

153. MORTGAGES—Right of Redemption.—Where a mortgagee purchased at his own sale without authority, two years is a reasonable time within which the mortgagor or his privies must elect to disaffirm and redeem.—ELROD V. SMITH, Ala., 30 South. Rep. 420.

154. MUNICIPAL CORPORATIONS — Assessments for Sewer Construction. — In the construction of trunk sewers, the assessment is to be made at the same time with that on property presently benefited, but the lien does not come into existence until the connecting sewer is built.—SEAMEN v. CITY OF CAMDEN, N. J., 49 Atl. Rep. 977.

155. MUNICIPAL CORPORATIONS — Concealed Weapons—Prohibition.—A city held to have authority to pass ordinance prohibiting the carrying of concealed weapons within the city.—CITY COUNCIL OF ABBEVILLE v. LEOPARD, S. Car., 39 S. E. Rep. 248.

156. MUNICIPAL CORPORATIONS—Constructing Sewer. —In action by a city to recover for expenses in constructing a sewer, affidavit of defense held to show a good defense.—CITY OF SCRANTON v. LEVERS, Pa., 49 Atl. Rep. 980.

157. MUNICIPAL CORPORATIONS — Ice on Sidewalk.— Where the evidence would justify finding that a fall on a sidewalk was caused either by ice or by defects in the walk, the question of the city's liability is for the jury.—ZIEGLER v. CITY OF SPOKANE, Wash., 65 Pac. Rep. 752.

158. MUNICIPAL CORPORATIONS—Original Paving.— Question whether a paving is an original one, so as to render abutting property liable for the cost thereof, held for the court.—CITY OF HARRISBURG v. FUNK, Pa., 49 Atl. Rep. 992.

159. MUNICIPAL CORPORATIONS—Public Contractor—Liability.—Contractor for public improvement held not liable for consequential damages to an individual because of the use of a portion of the street in front of his hotel, where no negligence is shown.—BATES v. HOLBROOK, N. Y., 71 N. Y. Supp. 1013.

160. MUNICIPAL CORPORATIONS — Tax Levied for Light.—Where a tax is levied to meet the expense of a contract by a city for water and light, so far as it has been paid, the city is bound to remit to the plaintiff furnishing such water and light.—LAKE CHARLES ICE, LIGHT & WATERWORKS v. CITY OF LAKE CHARLES, La., 30 South. Rep. 280.

161. OFFICE AND OFFICERS—Action Against Treasurer—Plaintiff.—Action against city treasurer on his bond should be brought in the name of the person aggrieved, and not in the name of the city for his use.— SOMERVILLE v. WOOD, Ala., 30 South. Rep. 280.

162. PARTITION—Fees of Solicitors.—Under a bill in partition, where a sale is made, the solicitors for complainant are not entitled to fees out of the funds arising therefrom.—JORDAN v. FARROW, Ala., 30 South. Rep. 338.

163. PARTITION—Legatees.—Petition by legatees in disregard of injunction of testator held valid.—RAPIER v. O'DONNELL, La., 30 South. Rep. 256.

164. PARTITION — Minors —Attack.—Minors cannot claim right to property disposed of in partition as long as the proceedings are not attacked in a direct action.—SCOVELL v. LEVY'S HEIRS, La., 30 South. Rep. 322.

165. PARTITION — Order of Sale—Indivisibility.—A judge cannot order the sale at auction to effect partition without proof that the property is indivisible.— MACKIN v. WILDS, La., 30 South. Rep. 257.

166. PARTITION—Private Sale.—In partition by private sales, liens of parties are transferred to the proceeds.—SUCCESSION OF VIARD, La., 30 South. Rep. 246.

167. PLEADING—Amendment.—Where plaintiff sues to foreclose in her individual capacity, an amendment asking for relief as trustee held properly disallowed. LAPIERRE v. WEBB, Ga., 39 S. E. Rep. 844.

168. PLEDGES—Director Holding Collateral of Bank. —Where the cashier of a bank to secure his private debt pledges to a director collaterals of the bank, such director cannot hold the collaterals.—MAJOR v. STONE'S RIVER NAT. BANK, Tenn., 64 S. W. Rep. 352.

169. PRINCIPAL AND AGENT—Authority to Collect.— One who makes payment to a second person, not the owner of a note or in possession of it, assumes the burden of proving that such person was authorized to collect.—GILBERT v. GARBER, Neb., 87 N. W. Rep. 179.

170. PRINCIPAL AND AGENT — Collecting Agent— Powers.—Power of collecting agent held limited to receiving that which the law declares to be a legal tender, or which, by common consent, is treated as money.—GILBERT v. GARBER, Neb., 87 N. W. Rep. 179.

171. PRINCIPAL AND AGENT—Failure of Principal— Terminating Agency.—An agent cannot terminate his agency, and become employee of a third person to the contract, because of the failure of his principal.— MEANS v. ROSS, La., 30 South. Rep. 300.

172. PUBLIC LANDS—Patent—Invalid on Face.—Where a patent of land sold to the state was valid on its face, its invalidity could not be established by evidence outside of it.—MORGAN v. TURNER, N. Y., 71 N. Y. Supp. 996.

173. QUO WARRANTO—Sufficiency.—The state in *quo warranto* proceedings against a city, held to stand or fall on the sufficiency of facts alleged in the complaint.—PEOPLE v. LOS ANGELES, Cal., 65 Pac. Rep. 749.

174. RAILROADS — Action for Recklessness.—Where action charges defendant with doing an act wilfully, wantonly, and recklessly, plaintiff cannot recover on showing ordinary negligence of defendant.—PROCTOR v. SOUTHERN RY. Co., S. Car., 39 S. E. Rep. 851.

175. RAILROADS—Intersection—Rights of Trains.— Where a train has obtained a right of way over a railroad intersection, it is negligence for engineer on train on other road to attempt to make crossing in front of approaching train.—DAVIS v. HOUSTON & S. RY. Co., La., 30 South. Rep. 250.

176. RAILROADS—Liability for Leased Road.—A railroad corporation organized to manage a railroad held liable to one injured thereon, though the road had not been transferred to the corporation.—SAN JACINTO & S. RY. CO. v. MOLIN, Tex., 64 S. W. Rep. 314.

177. RAILROADS—Reckless Speed.—A railroad company running trains recklessly fast through city held liable, though there was no statute or ordinance regulating the speed.—SUNDMAKER v. YAZOO & M. V. R. Co., La., 30 South. Rep. 285.

178. RECEIVERS—Sale of Business.—Goods ordered by receiver of a mercantile business as a going concern, but not paid for, held not included in a sale of the business by receiver.—CHARTER OAK STOVE & RANGE CO. v. RICE, La., 30 South. Rep. 321.

179. REMAINDERS — Life Tenants—Waste.—Remainder men may appeal to equity to prevent life tenant from wasting and destroying the *corpus* of the estate. —KOLLOCK v. WEBB, Ga., 39 S. E. Rep. 839.

180. SALES—Installments.—Where a contract for the sale of personalty provides that title shall not pass until full payment of installments, the vendor may maintain a suit for each installment as it falls due.— GRAY v. BOOTH, N. Y., 71 N. Y. Supp. 1015.

181. SEQUESTRATION — Consignee. — Consignee of goods can sustain sequestration against the master of the carrier for their recovery.—SONIA COTTON OIL CO. v. THE RED RIVER, La., 30 South. Rep. 303.

182. SET-OFF AND COUNTERCLAIM—Independent Contract.—Defendant in action on written contract may show an independent agreement entered into at the same time by parol.—VIRGINIA-CAROLINA CHEMICAL CO. v. MOORE, S. Car., 39 S. E. Rep. 846.

183. SLAVES — Legitimation.—In ejectment, where plaintiffs claim as children of former slaves, a charge held proper that if the mother of plaintiffs died not earlier than the day of the passage of the ordinance legitimating the children of slaves, they must find for plaintiffs.—WOODS v. MOTEN, Ala., 30 South. Rep. 324.

184. STATUTES—Title.—Act Dec. 12, 1884, held unconstitutional, in so far as it prohibits the giving away of liquors, as not expressing the subject of the act in the title.—STATE v. DAVIS, Ala., 30 South. Rep. 344.

185. STATUTES—Title—More Than One Subject.—Act March 25, 1873, held unconstitutional, as embracing more than the subject expressed in its title.—STATE v. CRAIG, Tenn., 64 S. W. Rep. 326.

186. STATUTES—Title—Object.—Act May 17, 1894, entitled "An act to protect the planting and cultivating of oysters in the tide waters of the state," held not to state the object of the act in the title.—STATE v. STEELMAN, N. J., 49 Atl. Rep. 978.

187. TAXATION—Excessive Assessment.—The law contemplates that if taxpayer's property is excessively assessed he should sue, after complaint seasonably made before board of review.—LIQUIDATING COM'RS OF NEW ORLEANS WAREHOUSE v. MARRERO, La., 30 South. Rep. 305.

188. TAXATION—Failure to Collect State Tax—County Liable.—A county having failed to collect a tax for state purposes, is liable therefor to the state.—COMMONWEALTH v. MCKEAN COUNTY, Pa., 45 Atl. Rep. 982.

189. TAXATION—Lien—Foreclosure.—Lien created by filing of town collector's bond may be foreclosed in equity.—CHATFIELD v. CAMPBELL, N. Y., 71 N. Y. Supp. 1004.

190. TAXATION—Sale.—Sale for taxes to the state, where patent thereafter issued from the state, and was recorded, held valid under Tax Law, 1896, ch. 908, § 182.—MORGAN v. TURNER, N. Y. 71 N. Y. Supp. 996.

191. TAXATION—Transfer Tax.—Money of non-resident, temporarily deposited in New York, held, on his death, not subject to transfer tax.—IN RE LEOPOLD'S ESTATE, N. Y., 71 N. Y., Supp. 1032.

192. TAXATION—Transfer Tax.—A surrogate cannot amend an order assessing transfer tax on a life interest in United States bonds, subsequently declared by court of appeals to be exempt from taxation.—IN RE VON POST'S ESTATE, N. Y., 71 N. Y. Supp. 1039.

193. TELEGRAPHS AND TELEPHONES—Mandamus—Furnishing Facilities.—*Mandamus* lies to compel telephone company to furnish facilities to all similiarly situated without discrimination.—STATE v. CITIZENS' TEL. CO., S. Car., 39 S. E. Rep. 257.

194. TELEGRAPHS AND TELEPHONES—Refusing Connection.—A telephone company may refuse connection to one who attaches private extension instruments to its lines, where the company is willing to furnish such instruments at reasonable rates.—GARDNER v. PROVIDENCE TEL. CO., R. I., 49 Atl. Rep. 1004.

195. TRIAL—Amending Special Findings.—After final judgment, the trial court has no power to amend a special finding.—POLLARD v. FIRST AVE. COAL-MIN. CO., Ind., 61 N. E. Rep. 9.

196. TRIAL—Assuming Truth of Certain Facts.—Where certain facts are clearly proven without conflict, a charge assuming them as true held not erroneous.—WOOD v. MOTEN, Ala., 30 South. Rep. 324.

197. TRIAL—Clerks—Minutes.—Clerks of court, whether the testimony is taken down in writing or not, must make a minute of the swearing of the witnesses, giving their names.—MACKIN v. WILDS, La., 30 South. Rep. 257.

198. USURY—Excess of Principal.—On bill to cancel mortgage because of usury, decree requiring complainant to pay anything in excess of principal, with legal interest, held erroneous.—WARD v. BANK OF ABBEVILLE, Ala., 30 South. Rep. 341.

199. VENDOR AND PURCHASER—Damages.—In action by vendee to recover damages for alleged breach of contract for sale of land, plaintiff held not entitled to recover, where he fails to show tender of the purchase money due, or of a deed ever executed.—HARPER v. JOHNSON, Ala., 30 South. Rep. 283.

200. VENDOR AND PURCHASER—Non-Performance.—In action for failure to perform a contract for support, made in consideration of a good and sufficient deed to certain property, a deed not duly executed and acknowledged held inadmissible in evidence.—GUNDERSON v. GUNDERSON, Wash., 65 Pac. Rep. 791.

201. WATERS AND WATER COURSES—Irrigation.—The right to the water for irrigation may be obtained by prior appropiation, though the diversion is not made on any portion of the public domain.—BROWN v. BAKER, Oreg., 65 Pac. Rep. 799.

202. WATER AND WATER COURSES—Prior Appropriation.—Allegation in reply of right to the entire flow of a stream by reason of riparian proprietorship held a departure, where the complainant asserted a right by prior appropriation.—BROWN v. BAKER, Oreg., 65 Pac. Rep. 799.

203. WILLS—Bequest of Personalty for Life.—Where personalty was given to wife, her children to take what was unconsumed at her death, the wife took an absolute estate therein.—CAIN v. ROBERTSON, Ind., 61 N. E. Rep. 26.

204. WILLS—Codical—Construction.—In construing codicil of will, limitations expressed in will, and referred to in codicil, must be considered.—VAUGHAN v. BRIDGES, S. Car., 39 S. E. Rep. 347.

205. WILLS—Construction of "Heirs."—Wills construed, and word "heirs" held used in the sense of children, and that on the death of testator's wife his children take a life estate, and on their death his grandchildren acquire a fee.—WATSON v. WILLIAMSON, Ala., 30 South. Rep. 281.

206. WILLS—Omitting Children—Evidence of Intention.—Where plaintiff's mother died, leaving a will in terms giving her entire estate to their father, making no mention of her children, oral testimony that she intended to omit them is inadmissible.—MORRISON v. MORRISON, Wash., 65 Pac. Rep. 779.

207. WILLS—Omitting Reference to Children.—Where plaintiff's mother died, leaving a will in terms giving her entire estate to their father, making no mention of her children, the will is void as to them.—MORRISON v. MORRISON, Wash., 65 Pac. Rep. 779.

208. WILLS—Partnership Contract as a Will.—An instrument creating a partnership between father and son held in effect a will by the father, and not a deed.—GOMEZ v. HIGGINS, Ala., 30 South. Rep. 417.

209. WITNESSES—Donee Causa Mortis.—In an action by administrator of depositor against savings bank, and a defense of payment to donee *causa mortis*, the latter is not an incompetent witness.—PODMORE v. SEAMEN'S BANK FOR SAVINGS, N. Y., 71 N. Y. Supp. 1026.

210. WITNESSES—Duces Tecum.—Where a witness summoned by subpœna *duces tecum* produces the books of a corporatitn, it is no objection to their admission that the statute provides another mode of securing them.—COBB v. LAGARDE, Ala., 30 South. Rep. 326.

211. WITNESSES—Farm Labor Contracts.—Brother of one contracting party held a disinterested witness in a prosecution for violation of a verbal contract to labor on farm.—STATE v. EASTERLIN, S. Car. 39 S. E. Rep. 250.

212. WITNESSES—Impeachment.—Proof of particular vices is inadmissible as against accused in an attempt to impeach his character.—STATE v. GUY, La., 30 South. Rep. 268.

213. WITNESSES—Name on Back of Indictment.—A witness for the state will not be excluded because his name does not appear on the back of the indictment.—STATE v. ROBISON, S. Car., 39 S. E. Rep. 247.

214. WITNESSES—Relative—Credibility.—That a witness in behalf of accused is a relative, or jointly indicted for the offense, may be considered by the jury in passing on his credibility.—COCHRAN v. STATE, Ga., 39 S. E. Rep. 332.